

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the ____ of _____, 20__, by and between the Department for Mental Health and Mental Retardation Services, hereinafter referred to as “Covered Entity”, and _____, hereinafter referred to as “Business Associate”, (individually, a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled _____

dated _____, and is hereby referred to as the “Arrangement Agreement”); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in the Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Arrangement Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of the Arrangement Agreement shall control.

The term “Protected Health Information” (PHI) means individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

II CONFIDENTIALITY REQUIREMENTS

- (A) Business Associate agrees:
 - (i) to use or disclose any PHI solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;
 - (ii) at termination of this Arrangement Agreement, (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the

protections of this Arrangement Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

- (iii) to ensure that its agents, including a subcontractor, to whom it provides PHI received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of the Arrangement Agreement.

(B) Notwithstanding the prohibitions set forth in this Arrangement Agreement, Business Associate may use and disclose PHI as follows:

- (i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

- (a) the disclosure is required by law; or
- (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

- (ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Arrangement Agreement, data aggregations services means the combining of PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(C) Business Associate will implement appropriate safeguards to prevent use or disclosure of PHI other than as permitted in this Arrangement Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of PHI to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of PHI which is not in compliance with the terms of this Arrangement Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable,

any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business associate in violation or the requirements of this Arrangement Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to make available PHI to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

IV. TERMINATION

Notwithstanding, anything in this Arrangement Agreement to the contrary, Covered Entity shall have the right to terminate this Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of the Arrangement Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of the Arrangement Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Arrangement Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Arrangement Agreement immediately.

V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy rule, the parties to this Arrangement Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination or cancellation of the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors and assigns as set forth herein.

This Arrangement Agreement may be amended or modified only in writing signed by the Parties. No Party may assign its respective rights and obligations under this Arrangement Agreement without the prior written consent of the other Party. None of the provisions of this Arrangement Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Arrangement Agreement and any other agreements between the Parties evidencing their business relationship. This Arrangement Agreement will be governed by the laws of the Commonwealth of Kentucky. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of

performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of PHI, which are more restrictive than the provisions of this Arrangement Agreement, the provisions of the more restrictive documentation will control. The provisions of the Arrangement Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI.

In the event that any provision of this Arrangement Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Arrangement Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provisions of this Arrangement Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and amend the terms of this Arrangement Agreement, if necessary to bring it into compliance. If, after such thirty (30) day period, the Arrangement Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Arrangement Agreement as of the day and year written above.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

By: _____

Title: _____

Title: _____